TENNECO OIL CO.

IBLA 88-469 Decided December 3, 1990

Appeal from a decision of the Director, Minerals Management Service, affirming partial denial of requests for refund of rentals paid for a period of suspension of operations on six Federal offshore oil and gas leases. MMS-87-0472-OCS.

Vacated and remanded.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Suspensions -- Outer Continental Shelf Lands Act: Oil and Gas Leases

It was error to apply sec. 10(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339(a) (1988), to diminish the amount of rental refund for rentals paid for periods of lease suspension. In accordance with 30 CFR 218.154(c) (1987), MMS must credit advance rentals paid for the period of time operations were suspended against rental accruing after termination of the suspension.

APPEARANCES: Thomas R. Adkins, Esq., Lafayette, Louisiana, for Tenneco Oil Company; Howard W. Chalker, Esq., Geoffrey Heath, Esq., and Peter J. Schaumberg, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Tenneco Oil Company (Tenneco) appeals from a March 4, 1988, decision of the Director, Minerals Management Service (MMS), affirming a denial in part by the Albuquerque, New Mexico, Section Chief, Royalty Management Program, MMS, of a rental refund request from Tenneco pursuant to section 10(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1339(a) (1988). MMS reasoned that rentals paid more than 2 years before the request for repayment was made were barred by section 10.

On April 9, 1984, MMS notified Tenneco of a Suspension of Operations (SOO), in accordance with 30 CFR 250.12(a)(1)(iv) (1984), for the purpose of environmental studies on the following six Outer Continental Shelf

(OCS) leases of the Pulley Ridge Area in which Tenneco had an interest: OCS-G 6506 (Pulley Ridge Block 694, No. 78664), OCS-G 6507 (Pulley Ridge Block 695, No. 78665), OCS-G 6524 (Pulley Ridge Block 846, No. 78671), OCS-G 6525 (Pulley Ridge Block 847, No. 78672), OCS-G 6528 (Pulley Ridge Block 890, No. 78673), OCS-G 6529 (Pulley Ridge Block 891, No. 78674). The notice stated: "The term of the leases will be extended pursuant to 30 CFR 250.12(c)(1) [(1984)] for a period of time equivalent to the period of the suspension. This suspension does not affect your annual rental responsibilities for your lease."

By notices dated December 27, 1985, and March 28, 1986, the SOO was extended twice, ultimately ending on February 28, 1987, for a total of 1,055 days suspension. Both notices indicated that Tenneco was required to continue paying rent. During the period of suspension, Tenneco continued to submit annual rental payments of $17,280 for each of the subject leases. By notice dated April 20, 1987, the Gulf of Mexico OCS Regional Supervisor, MMS, informed Tenneco that a refund of rental paid for the period covered by the SOO had been approved by the Director, MMS. Thereafter, by letter dated June 30 and received July 7, 1987, Tenneco requested the refund of rental payments for the six leases at issue in the amount of $299,447.34. The request was summarized for each lease as follows:

Date Paid	Amount Paid	Period of Suspension	No. of Days	Refund Due
01/24/84	$17,280.00			
04/10/84 - 01/31/85		297		$14,022.30
01/85	$17,280.00	02/01/85 - 01/31/86	365	$17,280.00
01/86	$17,280.00	02/01/86 - 01/31/87	365	$17,280.00
01/87	$17,280.00	02/01/87 - 02/28/87	28	$ 1,325.59
				$49,907.89

On August 19, 1987, the Albuquerque Section Chief, Royalty Management Program, MMS, relying on OCSLA section 10, denied in part the refund request for "excess royalties" paid. The Section Chief determined that, while Tenneco was entitled to a refund of $111,633.54 for "excess royalties" paid, it was not entitled to the difference of $187,813.80 because those payments were made more than 2 years prior to July 7, 1987, when the refund request was filed.

On September 14, 1987, Tenneco appealed to the Director, MMS, arguing that the partial denial of its refund request incorrectly applied section 10. Tenneco stated that since MMS kept extending the effective time of the SOO, it could not file for rental refunds until the SOO was lifted. Tenneco asserted that the congressional intent of the 2-year limitation was to require lessees to verify their accounts promptly and that, under these circumstances, the application of OCSLA section 10 is "inappropriate" because

> [d]uring the period of the MMS-mandated SOO, namely April 10, 1984 through February 28, 1987, Tenneco was still required to pay its

> delay rentals, because to have stopped payment would have resulted in a forfeiture of leasehold interests by Tenneco. Nevertheless, the MMS Section Chief held in its August 19 decision that all payments made prior to July 7, 1985, were beyond the two-year limitation period, thus precluding Tenneco to collect on delay rentals it had dutifully paid to the MMS from the inception of the SOO (April 10, 1984) to July 7, 1985.

(Tenneco Brief dated Sept. 14, 1987, at 2).

On March 4, 1988, the Director, MMS, affirmed the partial denial of the refund request. The Director found the requirement that Tenneco pay rent during the period of the SOO was erroneous, but concluded that reliance upon such erroneous instruction did not relieve the lessee of the consequences imposed by the statute for failure to comply with the requirements. The Director held that the Department does not have authority under any circumstance to waive the statute of limitations for refunding payments made under OCS leases.

[1] In relevant part, section 10 of OCSLA, 30 U.S.C. § 1339(a) (1988), provides:

> [W]hen it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after making of the payment * * *.

This provision confers authority upon the Secretary of the Interior to approve refunds for overpayments arising from OCS leases and also authorizes the Secretary of the Treasury to make the payments. However, such authority is premised upon a request for refund within 2 years of the date payment is received by the appropriate office. See Shell Offshore, 96 IBLA 149, 94 I.D. 69 (1987), rev'd sub nom. Chevron U.S.A., Inc. v. United States, No. 350-87L (Cl. Ct. Dec. 5, 1989), appeal filed (Fed. Cir. Jan. 31, 1990).

> The regulations governing appellant's obligation to pay rental read in relevant part:
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> > If under the provisions of 30 CFR 250.12(a)(1)(ii), (iii) or (iv), the Director, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

30 CFR 218.154(a) (1987). The SOO was issued under the provisions of 30 CFR 250.12(a)(1)(iv), pertaining to preparation of an environmental

impact statement or analysis. MMS admits that rental was not due for the period of suspension, but asserts that the lessee knew or should have known, based on 30 CFR 218.154(a), that it was not required to pay rental and that the statute mandates a refund request within 2 years of payment if refund is to be allowed.

Under OCSLA section 10(a), if it were applicable here, the right to a refund must have been asserted within 2 years from payment or the Department would have no authority to grant a refund, notwithstanding arguments with respect to the tolling of the statute in light of equitable considerations or as to the date the overpayment was legally or actually recognized. Shell Offshore, 96 IBLA at 165-67, 94 I.D. at 78-79. Section 10(a), however, does not operate to extinguish a lessee's claim to moneys overpaid, but merely establishes authority for repayment of funds deposited in the Treasury upon the timely filing of a refund request.

The instant situation should have been resolved under 30 CFR 218.154(c) (1987), which provides:

> If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee.

The Board applied this regulation in Union Oil Co. of California, 116 IBLA 67 (1990), another case involving a rental refund request, which was denied by MMS on the basis of section 10(a) of OCSLA. The rationale set forth in that case is controlling herein. 1/ In computing the prorated rental, MMS may credit advance rentals during the period of time operations were suspended. Unlike royalty payments, where the obligation to pay does not arise until "the end of the month following the month during which the oil and gas is produced and sold" (30 CFR 218.50(a) (1987)), rental is paid in advance. Because there is no statutory or regulatory bar to prepayment of annual rentals, any rental paid but not earned should be credited against future advance rentals. See Union Oil Co. of California, 116 IBLA at 72 n.5. The record before us does not indicate that MMS computed the amount of advance rental due or notified the lessee of such computation at the end of the suspension period. Under the circumstances of this case, the payment of rental during the period of the SOO should be reviewed and adjustment made for rentals paid and not returned or credited.

1/ In Union, MMS correctly informed the lessee that rental was not required during the period of suspension. However, upon lifting the suspension, MMS made no adjustment for the rental which had been paid in advance for the period of the suspension, and denied Union's request for a refund of that amount.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded for action consistent with this opinion.

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Franklin D. Arness
Administrative Judge

I concur:

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Bruce R. Harris
Administrative Judge